

## REMARKS

In the Specification Amendments and Claim Amendments, changes are indicated by ~~strike through~~ for deleted matter and underlining for added matter.

For clarity, the headings used in these remarks conform generally to the headings used by the Examiner with respect to objections and rejections in the Detailed Action. In this response, references to line numbers are to the specification and claims as they were prior to any amendments referred to herein.

### Election/Restrictions

The Examiner has required restriction to one of the following groups of claims: claims 1-7, claims 8-17 and claims 18-27.

The applicant affirms the election of claims 18-27 without traverse, as made provisionally by Lisa M. Caldwell in an August telephone discussion with the Examiner, without prejudice to the applicant's right to reassert the un-elected claims in a derivative application.

### Specification

The Examiner has objected to the abstract because of the inclusion of "is disclosed" in the first sentence of the abstract. The phrase "is disclosed", has been deleted.

### Claim Objections

The Examiner has objected to claims 21 and 22 because these claims recite the limitation, "a gate as defined in claim 18", in line 1 of each claim, when clearly what was intended is, as indicated by the Examiner, "a hinge as defined in claim 18".

Claims 21 and 22 have been amended at line 1 of each claim, by replacing ~~gate~~ with hinge.

### Claim Rejections - 35 USC § 102

The Examiner has rejected claims 18-27 as being anticipated by the publication of the applicant's own prior application, Publication No. US 2002/0017062 (referred to herein as the "Morris '062 Publication"), which subsequently issued as US Patent No. 6,656,069.

The Examiner has provided particulars for the Examiner's assertion of anticipation for each of original claims 18-27. In what follows, applicant comments on the Examiner's objections with respect to original claims 18, 20 and 24.

#### Original Claim 18

With respect to original claim 18, among other things, the Examiner states that the Morris '062 Publication discloses a hinge comprising a, "generally rectangular parallelepiped link", to wit, item 5 in Morris. Applicant respectfully submits that item 5 in the Morris '062 Publication is clearly not a generally-rectangular parallelepiped.

A parallelepiped is, "A six-faced polyhedron, whose faces are parallelograms and in which opposite pairs of faces are identical." ([www.thesaurus.maths.org](http://www.thesaurus.maths.org), University of Cambridge). A parallelogram is, "a four sided figure whose opposite sides are parallel." ([www.thesaurus.maths.org](http://www.thesaurus.maths.org), University of Cambridge).

In the Morris '062 Publication, at paragraph 0074, at the beginning of the description of item 5, to give the reader a rough idea of its shape, item 5 is described as "approximately a rectangular parallelepiped" (underlining added), but the details of item 5 set out in paragraph 0074 (e.g. "The link 5 is in addition provided with special shaping of the end surface 56 that is connected to the fixed connector 6...") and in the rest of the Detailed Description, and shown in the drawings, make it clear that item 5 is not a parallelepiped. Not all faces of item 5 of the Morris '062 Publication are parallelograms and not all opposite pairs of faces are identical. End surface 56 of item 5 includes a protruding finger (57) and is thus not a parallelogram and is completely different from,

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rather than identical to, the opposite end surface (55). As well, the large faces of item 5 are not parallelograms; the side of each large face defined by the, "special shaping of the end surface 56", is irregular and cannot be considered to be parallel to the other opposite side of each large face.

With respect to original claim 18, the Examiner states that the Morris '062 Publication discloses a hinge wherein, "the combined pivoting of each of the connectors relative to the link is such that, when the hinge is installed, a gate arm may pivot relative to a handrail through 180°." Applicant respectfully submits that a significant functional and configurational difference between the hinge disclosed in the Morris '062 Publication and the current hinge is that with hinge disclosed in the Morris '062 Publication, relative longitudinal movement as between the link 5 and the fixed connector 6 (applicant notes that reference number 4 is incorrectly associated with the fixed connector 6 in Figure 4 of the Morris '062 Publication), is required to permit relative pivotal movement as between these two components. The configuration of the end surface 56 of the link 5 and the complementary shape of the web 68 on the fixed connector 6, prevent a simple relative pivotal movement of the two components as between a fully closed position and a fully open position, without concurrent relative longitudinal movement.

#### Original Claim 20

With respect to original claim 20, the Examiner states that the Morris '062 Publication discloses a hinge wherein, "when the hinge is installed and the gate arm to which it is installed is in a closed position, the clevis fingers of one connector abut the clevis fingers of the other connector (shown in figure 1) so as to impede pivotal movement of the gate arm in the direction opposite an opening direction." Applicant respectfully submits that the clevis fingers of hinge disclosed in the Morris '062 Publication may or may not abut when the hinge is in the closed position, but if it occurs, such abutment would not, "impede pivotal movement of the gate arm in the direction opposite an opening direction." In the hinge disclosed in the Morris '062 Publication, it is the abutment of the longitudinally extending faces of the protruding finger on the web 68 (item 16) and the protruding finger

on end surface 56 (item 57) that impedes movement of the gate arm in the direction opposite the opening direction. If these features were not present, as the link 5 can move longitudinally relative to the fixed connector 6, abutment of the fixed connector 6 and the mobile connector 4, would, in the presence of a force tending to pivot the gate arm in the direction opposite the opening direction, merely result in a separation of the fixed connector 6 and the mobile connector 4 one from the other, and a pivoting of the gate arm in the direction opposite the opening direction.

#### Original Claim 24

With respect to original claim 24, the Examiner states that the Morris '062 Publication discloses a hinge wherein the connectors are substantially identical one to the other, in that, "as shown in figures 1-4, the connectors are nearly identical." Applicant respectfully submits that in light of the full disclosure in the Morris '062 Publication, and even in light of a superficial review of figures 1-4, it is clear that the mobile connector 4 and fixed connector 6 in the Morris '062 Publication are not "substantially identical".

First, it is inappropriate to equate "substantially" with "nearly", as the Examiner has done in rejecting claim 24. The word "substantially" is a well-accepted standard tool in claim drafting used to avoid reliance on the doctrine of equivalents. It is a broadening modifier that when used softens the edges of a magnitude or quantity, condition, or comparison. "Substantially" is considered to not be indefinite where one skilled in the art would know what was meant (e.g. "substantially equal" in *Andrew Corp. v. Gabriel Electronics*, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988). Clearly a magnitude or quantity, condition, or comparison limitation modified by "substantially" includes the given magnitude or quantity, condition, or comparison. By contrast, "nearly" means, "very close to, almost" (The New Oxford Dictionary of English, Oxford University Press, 2001), and an expression containing a word modified by "nearly" means something other than the modified word. For example, a person who is "nearly home", is clearly not home. To state, as the Examiner has done in the 12 September Examiner's Report, that

the two connectors in the Morris '062 Publication are "nearly identical" is equivalent to acknowledging that they are not identical.

In any case, it is clear that the mobile connector 4 and fixed connector 6 disclosed in the Morris '062 Publication are not "substantially identical", in that a person skilled in the art would not consider them to be identical for practical purposes. The mobile connector 4 and fixed connector 6 bear a superficial similarity in their readily visible aspects when installed, but they differ significantly in the configuration of their respective webs, in how they interrelate with the respective ends of the link 5 and in how they function. Significantly, if the hinge disclosed in the Morris '062 Publication were to be incorrectly assembled, such that the mobile connector 4 and fixed connector 6 were attached to the wrong end of the link 5 (which may not even be possible), the hinge would not function. It is clear that rather than teaching two substantially identical hinge connectors, the Morris '062 Publication teaches that it is necessary to have two different connectors that function differently one from the other.

#### Claim Amendments

As set out in the above Claim Amendments section:

1. Claim 18 has been amended:
  - a) to indicate that the connectors, are substantially identical, which as discussed above, clearly distinguishes the claimed hinge from what is taught in the Morris '062 Publication;
  - b) by reciting the two pins positively, that is, introducing them as the subject of a separate clause so as to correct the inadvertent inferential claiming of these features in the original claim 18; and
  - c) to indicate that the holes and pins are configured so as to prevent relative longitudinal movement as between each of the connectors and the link, which further distinguishes the claimed hinge from what is taught in the Morris '062 Publication, and which is shown in Figures 1, 2, 3A and 4;

2. Claims 19 and 20 have been amended to indicate that the abutting sections are surfaces extending substantially perpendicular to the longitudinal axis of the handrail and gate arm, which further distinguishes the claimed hinge from what is taught in the Morris '062 Publication (in which the abutting sections include surfaces extending parallel to the longitudinal axis of the handrail and gate arm, i.e. on the protruding finger on the web (16) and the protruding finger on the end of the link (57)), and which is supported at page 9, lines 5-8 of the specification and in Figures 1 and 2;
3. Claims 21 and 2 have been amended as discussed above with respect to gate and hinge; and
4. Claims 23 and 24 have been cancelled.

#### Double Patenting

The Examiner has asserted a nonstatutory/obviousness-type double-patenting rejection of claim 18, as being unpatentable over claim 29 of the applicant's own US Patent No. 6,565,069 in view US Patent No. 4,131,378 (Daws), and has invited the applicant to file a terminal disclaimer. A terminal disclaimer signed by the Applicant's agent is enclosed with this reply.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

By:



Robert H. Barrigar

Registration No.: 26,125

MDC:lld

Victoria, British Columbia

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